

REPORT - PLANNING COMMISSION MEETING
July 24, 2003

Project Name and Number: Density Bonus and Affordable Housing Incentives (PLN2003-00283)

Applicant: City of Fremont

Proposal: To consider a City-initiated Zoning Text Amendment (ZTA) to create a new Density Bonus and Affordable Housing Incentives Ordinance that implements State Density Bonus law.

Recommended Action: Recommend Zoning Text Amendment (PLN2003-00283) to the City Council.

Location: Citywide

Environmental Review: A Negative Declaration has been prepared and circulated for this project.

General Plan: All land within the City designated for residential and/or mixed use development of five or more units.

Zoning: Residential and mixed-use zones.

Existing Land Use: N/A

Public Hearing Notice: Public hearing notification is applicable. A Display Ad and Public Hearing Notice were delivered to The Argus on July 8, 2003, to be published by July 14, 2003. In addition, approximately fifty public hearing notices were mailed as a courtesy to interested parties on July 14, 2003.

Executive Summary: To assist the City of Fremont in meeting its regional housing needs, the City's Housing Element calls for the development of a new Density Bonus Ordinance. The new ordinance maintains compliance with State law and consolidates the City's Density Bonus provisions into one location for ease of use. The new Ordinance does not authorize any new construction or development projects but rather establishes procedures for applicants that desire additional density beyond that typically authorized by the General Plan land use designation and the associated zoning regulations for a site. In consideration of the additional density and incentives, the applicant must either agree to provide qualified senior housing or a percentage of the total number of units within their project as affordable units for an established period of time.

Background and Previous Actions: In January 2003, the provisions of State law regarding Density Bonus were amended (Assembly Bill 1866). Housing Element Implementation Program 12 and Land Use Element Policy LU-1.6, Implementation Program 1 calls for the adoption of a new Density Bonus Ordinance consistent with the provisions of the recently amended State law. In addition to addressing density bonuses, the State law also addresses incentives for affordable housing.

Project Description: The proposed Zoning Text Amendment (ZTA) includes both the creation of a Density Bonus and Affordable Housing Incentives Ordinance as well as the removal of the existing Density Bonus provisions within the Planned Development zone that relate to the former step density process for density bonuses.

Project Analysis:

- **General Plan Conformance:** The proposed Density Bonus and Affordable Housing Incentives Ordinance implements the following General Plan Goals, Policies and Programs:

Goal H 3: Housing Affordable and Appropriate for a Variety of Fremont Households at all Economic Levels Throughout the City Consistent with the Hill Area Initiative of 2002.

- Policy 3A: Adopt appropriate land use regulations and other development tools to encourage development of affordable housing, consistent with the Hill Area Initiative of 2002.
- Program 12: “Density Bonus Ordinance.
Revise the City’s Density Bonus Ordinance to include density bonus procedures and provisions that reflect current State Density Bonus law requirements (AB 1866). The new ordinance will consolidate the provisions and procedures of the City’s Density Bonus law into one location for ease of use. It will also eliminate the necessity for Planned District zoning and eliminate references to step densities in the General Plan Land Use Element.”
- Analysis: The proposed ordinance implements the remaining objectives of this Housing Element Program. On May 13, 2003, the City Council adopted a revised Land Use Element that eliminated the “step density” procedures.
- Program 13 A: “Incentives “Package” for Affordable Housing Developments.
... The City will develop and market an “Incentives Package” for multi-family developers. The Incentives Package will encourage and facilitate the construction of affordable housing projects and projects that are developed above the required midpoint density of the respective land use designation and, in particular, for developments using the density bonus. ...”
- Analysis: The proposal implements one of the “development” components of this program in that State Density Bonus law as well as the proposed ordinance provide for incentives to assist in the development of affordable housing.
- LU-1.6
Implementation 1 Revise the Density Bonus Ordinance consistent with the Housing Element Implementation Program 12 and State Density Bonus law.

Overview of Proposed Ordinance: This section of the report provides a brief overview of the proposed ordinance. Exhibit “A” attached hereto provides the entire text of the proposed ordinance. Each section of the proposed ordinance is identified below, followed by a brief explanation of that section. Terms defined by this proposed ordinance are shown in “Capitalized” format:

Section 8-22180 Purpose and Intent
Section 8-22181 Definitions
Section 8-22182 Implementation
Section 8-22183 Development Standards
Section 8-22184 Development Incentives and Concessions
Section 8-22185 Application Requirements and Review
Section 8-22186 Density Bonus Housing Agreement

Section 8-22180 Purpose & Intent: This section provides introduction and indicates that the Ordinance implements State law and the City’s Housing Element. It also facilitates the development of affordable housing.

Section 8-22181 Definitions: The definitions section is largely derived from the State law and the State’s Model Ordinance. Definitions are set forth within this article, because many of the terms may have differing meanings within the context of the Fremont Municipal Code.

In particular, it is helpful to understand the term “Target Unit”. A Target Unit is an affordable or senior unit that the developer must agree to provide in order to be eligible for a density bonus.

Section 8-22182 Implementation: Under the provisions of State law and the proposed Density Bonus and Affordable Housing Incentives Ordinance the following types of projects involving five or more units would qualify:

- 20% of units to lower income households; or
- 10% of units to very low income households; or
- 20% of units to moderate income households as part of a newly constructed condominium project; or
- 33% of units to low or moderate income households within a condominium conversion project; or
- 15% of units to lower income households within a condominium conversion project; or
- 50% of units as Senior Citizen Housing.

State law and the proposed Ordinance provides that a minimum 25% density bonus is required to be granted on top of maximum density allowed for a given site and that fractions of units are rounded up. A Density Bonus of greater than 25% is treated as an additional incentive. No General Plan or zoning changes are needed to allow for increased density.

Section 8-22183 Development Standards: The proposed ordinance provides that concurrent construction of the Target/affordable Units is generally required. It sets forth a 30-year minimum term of affordability for projects receiving a density bonus and incentive. The Ordinance provides for a minimum 10-year term when only a density bonus is received.

The standards also provide that the Target Units be built on site and dispersed whenever possible and practical. It also provides that the size of units should be equivalent in general exterior design and appearance as well as number of bedrooms with the market rate units. Finally, the ordinance provides that the Target Units must be covered by a housing agreement specifying among other things, the term of affordability.

Section 8-22184 Incentives and Concessions: The State law and the proposed ordinance provides that an applicant may request an incentive or concession and that an applicant may seek waiver or modification of development or zoning standards. Several examples of incentives are given within the proposed ordinance, Section 8-22184(c).

Section 8-22185 Application Requirements and Review: The proposed ordinance provides for concurrent review of density bonus applications with other applications to reduce processing times and also provides for the option of a preliminary application. In either event, the proposed ordinance provides that the Planning Director or Director's designee will inform the applicant of the City's recommendation prior to Planning Commission review.

Section 8-22186 Housing Agreement: The State law and the proposed ordinance provide that a Housing Agreement is required and that the provisions of the Agreement, with its provisions enumerated, is recorded.

Response from Agencies and Organizations: Staff held a community meeting regarding the development of the Density Bonus and Affordable Housing Incentives Ordinance July 10, 2003. At this meeting the following comments and suggestions were received. Staff's responses follow:

Comment 1: *In Section 8-22183(c) there is only a 10 year affordability restriction for projects that receive only a density bonus and no incentives. Can the City's ordinance propose a longer term affordability restriction?*

Staff Response: Staff reviewed State law and it appears that the 10 year restriction only applies to for-sale Condominium Projects rather than projects that do not request/receive an incentive. Unlike another section of State law which specifically states that extended periods of affordability can be required where financial assistance is provide, this section of the law is silent with regard to extended periods of affordability probably because there is an assumption that the moderate income units generated in condominium developments will not receive financial assistance that require longer term affordability. It; however, appears reasonable that if there is some other form of financial assistance provided, that assistance may come with an extended affordability term. As such, staff has amended Section 8-22183(b) and (c) to allow for extended affordability terms should such financing become available in the future.

Comment 2: *How many of the Senior units need to be affordable in order to qualify for a density bonus?*

Staff Response: Senior units are not required to be "affordable" under state law. Fifty percent of the units, however, must meet strict requirements established under California Civil Code Section 51.3 including accessibility, etc. Section 8-22182 of the proposed Ordinance has been amended to clarify this requirement.

Comment 3: How do you determine the number of Target Units when there are mandatory Inclusionary Units within a project? Do Inclusionary Units count as Target Units? Shouldn't the Target Units be in addition to any required Inclusionary Units?

Staff Response: State law does not anticipate Inclusionary requirements. State law merely specifies that if a project provides a certain threshold affordability (whether required or not) that the project developer is eligible for a density bonus and incentive. Based upon the State law, staff finds that Inclusionary units can be used to satisfy Target Unit requirements. Staff also finds that this may provide an incentive for market rate developers of rental housing projects to exceed the City's Inclusionary requirements.

Comment 4: The City should consider specifying higher percentages of density bonuses for projects that provide affordability beyond the basic requirements of State law.

Staff Response: Section 8-22182(h) of the proposed ordinance emulates State law. This section specifies that an applicant who agrees to construct both 20% of the total units for Lower Income Households and 10% of the total units for Very Low Income Households is entitled to only one density bonus; however, the applicant is entitled to a second "Additional Incentive". Nothing in the State law; however, precludes an applicant from requesting and the City from granting a Density Bonus over the minimum required Density Bonus of 25%. Section 8-22184(c)(4) does specify that a Density Bonus of over 25% is considered an Incentive.

Option 1: Leave text as proposed:

- (h) An applicant who agrees to construct both 20 percent of the total units for Lower Income Households and 10 percent of the total units for Very Low Income Households is entitled to only one Density Bonus; however, the applicant is entitled to a second Additional Incentive or Concession as identified in Section 8-22184 of this Article.

Option 2: Add provision for Increased Density Bonus in addition to an Additional Incentive:

- (h) An applicant who agrees to construct a larger number of Target Units and/or agrees to a longer term of affordability than otherwise required by terms of any financial assistance used to fund the Housing Development or the terms of this Article shall be entitled to an increased density bonus. The increased Density Bonus shall be determined based upon the increased number of Target Units and/or increased term of affordability. This increased density bonus shall be considered as a second Additional Incentive. Furthermore, an applicant who agrees to construct both 20 percent of the total units for Lower Income Households and 10 percent of the total units for Very Low Income Households is entitled to a third Additional Incentive.

Staff Analysis:

Option 1 follows the letter of State law but does not provide for possible variations in projects that may be proposed. Clearly the law provides for a second Additional Incentive when the requirements of Option 1 have been met, but does not specifically grant additional incentives to projects that may approach or exceed these requirements.

Option 2 provides flexibility in determining an increase in the allowed density bonus for various situations that could occur while not counting the increased density bonus as the applicant's second Additional Incentive. In essence this option provides for a third Additional Incentive.

Staff notes that the ordinance as proposed (Option 1) does not preclude an applicant from requesting additional incentives. Furthermore, the proposed ordinance does not preclude the City from granting further incentives to projects it believes contribute to the City's housing goals. It should also be noted that the approval process set forth in the R-3 zoning district provides significant flexibility in considering projects in addition to providing incentives for affordable housing development beyond those that may be requested by an applicant under the provisions of the proposed density bonus ordinance. Until the City has had some experience with both of these ordinances, staff recommends that the Density Bonus ordinance as proposed within this staff report (Option 1) be recommended to City Council.

Environmental Analysis: A finding is proposed that this project would not have a significant effect on the environment. Accordingly, a draft Negative Declaration has been prepared for consideration by the Planning Commission.

The initial study conducted for the project has evaluated the potential for this project to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources. Based on this finding, a Certificate of Fee Exemption will be submitted with the Notice of Determination after project approval, as required by Public Resources Code section 21089 (see attachment to draft Negative Declaration). The Certificate of Fee Exemption allows the project to be exempted from the review fee and environmental review by the California Department of Fish and Game.

Enclosures: Exhibit "A" Zoning Text Amendment
Initial Study and Draft Negative Declaration
Certificate of Fee Exemption
Informational: Density Bonus Law

Exhibits: Exhibit "A" Zoning Text Amendment

Recommended Actions:

1. Hold public hearing.
2. Recommend the City Council find the initial study has evaluated the potential for this project to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources.
3. Recommend the City Council approve draft Negative Declaration with accompanying Certificate of Fee Exemption and find it reflects the independent judgement of the City of Fremont.
4. Find PLN2003-00283, a Zoning Text Amendment, is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use and Housing Chapters, as enumerated within the staff report.
5. Find the public necessity, convenience and general welfare require the adoption of Zoning Text Amendment (PLN2003-00283) because the new Ordinance implements State Law and the City General Plan, as shown in Exhibit "A".
6. Recommend Zoning Text Amendment (PLN2003-00283) to the City Council in conformance with Exhibit "A" [Option 1].

EXHIBIT "A"
ZONING TEXT AMENDMENT (PLN2003-00283)

Language proposed to be added is shown in regular text. Language proposed to be removed is shown in ~~strikethrough text~~.

Section 1:

Article 21.8 (Density Bonus and Affordable Housing Incentives) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code is added to read as follows:

ARTICLE 21.8 DENSITY BONUS AND AFFORDABLE HOUSING INCENTIVES

Section 8-22180 Purpose and Intent

Section 8-22181 Definitions

Section 8-22182 Implementation

Section 8-22183 Development Standards

Section 8-22184 Development Incentives and Concessions

Section 8-22185 Application Requirements and Review

Section 8-22186 Density Bonus Housing Agreement

Section 8-22180. Purpose and Intent.

This Density Bonus and Affordable Housing Incentives Ordinance is intended to provide incentives or concessions for the production of housing for very low, lower income households, senior households or moderate income households, including Condominium Projects in accordance with Sections 65915 and 65917 of the California Government Code. In enacting this Article, it is the intent of the City of Fremont to facilitate the development of affordable housing and to implement the goals, objectives, and policies of the City's Housing Element. The regulations and procedures set forth in this Article shall apply throughout the City to all housing developments of five units or more.

Section 8-22181. Definitions.

Whenever the following terms are used in this Article, they shall have the meaning established by this section:

"Additional Incentives or Concessions" means such regulatory concessions as specified in California Government Code Subsections 65915 (d) and (j) to include, but not be limited to, the reduction of site development standards or zoning code requirements, direct financial assistance, approval of mixed use zoning in conjunction with the Housing Development, or any other regulatory incentive which would result in identifiable cost avoidance or reductions that are offered in addition to a Density Bonus. See Section 8-22184 of this Article.

"Affordable Rent" means monthly housing expenses, including a reasonable allowance for utilities, for rental Target Units reserved for Very Low or Lower Income Households, not exceeding the following calculations:

- (1) Very Low Income: 50 percent of the area median income for Alameda County, adjusted for household size, multiplied by 30 percent and divided by 12.
- (2) Lower Income: 60 percent of the area median income for Alameda County, adjusted for household size, multiplied by 30 percent and divided by 12.
- (3) Moderate Income: 120 percent of the area median income for Alameda County, adjusted for household size, multiplied by 30 percent and divided by 12.

"Affordable Sales Price" means a sales price at which Lower, Very Low Income or Moderate Income Households can qualify for the purchase of Target Units, calculated on the basis of underwriting standards of mortgage financing available for the development.

"Condominium Project" means a Housing Development that includes units as defined in subdivision (f) of Section 1351 of the Civil Code, for persons and families of low, lower or moderate income, as defined in Section 50093 of the Health and Safety Code.

"Density Bonus" means a minimum density increase of at least 25 percent over the otherwise Maximum Residential Density allowed by the General Plan for qualifying projects including lower, very low or senior housing, and at least 10 percent over for Condominium Projects.

"Density Bonus Housing Agreement" means a legally binding agreement between a developer and the City to ensure that the requirements of this Article are satisfied. The agreement, among other things, shall establish: the number of Target Units, their size, location, terms and conditions of affordability, and production schedule. See Section 8-22186 of this Article.

"Density Bonus Units" means those residential units granted pursuant to the provisions of this Article which exceed the otherwise Maximum Residential Density for the development site.

"Equivalent Financial Incentive" means a monetary contribution, based upon a land cost per dwelling unit value, equal to one of the following:

- (1) A Density Bonus and an Additional Incentive(s); or
- (2) A Density Bonus, where an Additional Incentive(s) is not requested or is determined to be unnecessary. See Section 8-22184 of this Article.

"Housing Cost" means the sum of actual or projected monthly payments for all of the following associated with for-sale Target Units: principal and interest on a mortgage loan, including any loan insurance fees, property taxes and assessments, fire and casualty insurance, property maintenance and repairs, homeowner association fees, and a reasonable allowance for utilities.

"Housing Development" means construction projects consisting of five or more residential units, including single family and multifamily for sale or rent, pursuant to this Article.

"Lower Income Household" means households whose income does not exceed the lower income limits applicable to Alameda County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.

"Maximum Residential Density" means the maximum number of residential units permitted by the City's General Plan Land Use Element at the time of application, excluding the provisions of this Article. If the Housing Development is within a planned development zone, the maximum residential density shall be determined on the basis of the General Plan.

"Moderate Income Household" means households whose income does not exceed the moderate income limits applicable to Alameda County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.

"Non-Restricted Unit" means all units within a Housing Development excluding the Target Units.

"Qualifying Resident" means senior citizens or other persons eligible to reside in Senior Citizen Housing.

"Senior Citizen Housing" means a Housing Development consistent with the California Fair Employment and Housing Act (Government Code Section 12900 et. seq., including 12955.9 in particular), which has been "designed to meet the physical and social needs of senior citizens," and which otherwise qualifies as "housing for older persons" as that phrase is used in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations (24 CFR, part 100, subpart E), and as that phrase is used in California Civil Code Section 51.2 and 51.3.

"Target Unit" means a dwelling unit within a Housing Development which will be reserved for sale or rent to, and affordable to, Very Low, Lower, Moderate-Income Households, or Qualifying Residents.

"Very Low Income Household" means households whose income does not exceed the very low income limits applicable to Alameda County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50105 of the California Health and Safety Code.

Section 8-22182. Implementation.

- (a) The City shall grant a Density Bonus and at least one Additional Incentive or Concession, identified in Section 8-22184 of this Article, to an applicant or developer of a Housing Development, who agrees to provide the following:
 - (1) At least 20 percent of the total units of the Housing Development as Target Units affordable to Lower Income Households; or
 - (2) At least 10 percent of the total units of the Housing Development as Target Units affordable to Very Low Income Households; or
 - (3) At least 50 percent of the total units of the Housing Development meet the definition of Senior Citizen Housing; or
 - (4) At least 20 percent of the total units of a newly constructed Condominium Project as Target Units affordable to Moderate Income Households.
- (b) The City shall grant either a Density Bonus, or other Equivalent Financial Incentives if the applicant or developer agrees to provide 33 percent of the total units in a Condominium Conversion Project as Target Units affordable to Low or Moderate Income Households as defined in state Health & Safety Code section 50093, or 15 percent of the total units in a Condominium Conversion Project as Target Units to Lower Income Households as defined in state Health & Safety Code section 50079.5.
- (c) In determining the minimum number of Density Bonus Units to be granted pursuant to this Section, the Maximum Residential Density for the site shall be multiplied by .25 for subsection 1, 2 and 3 and .10 for subsection 4 of this section. When calculating the number of permitted Density Bonus Units, any fractions of units shall be rounded to the next larger integer.
- (d) In determining the number of Target Units to be provided pursuant to this Section, the Maximum Residential Density shall be multiplied by:
 - .10 where Very Low Income Households are targeted, or
 - .20 where Lower Income Households are targeted,
 - .20 where Moderate Income Households within a newly constructed Condominium Project are targeted, or
 - .50 where Senior Citizen Housing is provided; or
 - .33 where Low or Moderate Income Households are targeted within a Condominium Conversion Project; or
 - .15 where Lower Income Households are targeted within a Condominium Conversion Project.

- (e) The Density Bonus Units shall not be included when determining the total number of Target Units in the Housing Development. When calculating the required number of Target Units, any resulting decimal fraction shall be rounded to the next larger integer.
- (f) In cases where a density increase of less than 25 percent is requested, no reduction will be allowed in the number of Target Units required. In cases where a density increase of more than 25 percent is requested, the requested density increase, if granted, shall be considered an Additional Incentive, as outlined in Section 8-22184 of this Article.
- (g) In cases where the developer agrees to construct more than 20 percent of the total units for Lower Income Households, or more than 10 percent of the total units for Very Low Income Households, or more than 20 percent of the total units for Moderate Income Households in Condominium Projects, the developer is entitled to only one Density Bonus and an Additional Incentive(s) (or an Equivalent Financial Incentive) pursuant to Section 8-22184 of this Article. Similarly, a developer who agrees to construct Senior Citizen Housing with 20 or 10 percent of the units reserved for Lower- or Very Low-Income Households, respectively, is only entitled to one Density Bonus and an Additional Incentive or Concession. The City may, however, grant multiple Additional Incentives to facilitate the inclusion of more Target Units than are required by this Article.
- (h) An applicant who agrees to construct both 20 percent of the total units for Lower Income Households and 10 percent of the total units for Very Low Income Households is entitled to only one Density Bonus; however, the applicant is entitled to a second Additional Incentive or Concession as identified in Section 8-22184 of this Article.
- (i) In accordance with State law, the granting of a concession or incentive shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval.
- (j) If the Housing Development has already received an incentive under the terms of the R-3 multi-family zoning district provisions (Article 7.5, Section 8-2750 et seq. of this Code), no similar incentive or concession will be granted, however, the applicant may propose a different incentive or concession under the terms of this Article.

Section 8-22183. Development Standards.

- (a) Target Units must be constructed concurrently with Non-Restricted Units unless both the City and the developer/applicant agree within the Density Bonus Housing Agreement to an alternative schedule for development.
- (b) Target Units shall remain restricted and affordable to the designated group for a minimum period of 10 years for Condominium Projects and 30 years for all other Housing Developments. A longer period of time may be specified if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.
- (c) In determining the maximum Affordable Rent or Affordable Sales Price of Target Units the following household and unit size assumptions shall be used, unless the Housing Development is subject to different assumptions imposed by other governmental regulations:

SRO (residential hotel) unit	75% of 1 person
0 bedroom (studio)	1 person
1 bedroom	2 person
2 bedroom	3 person

3 bedroom
4 bedroom

4 person
6 person

- (d) Target Units should be built on-site wherever possible and, when practical, be dispersed within the Housing Development. Where feasible, the number of bedrooms of the Target Units should be equivalent to the bedroom mix of the non-Target units of the Housing Development; except that the Developer may include a higher proportion of Target Units with more bedrooms. The design and appearance of the Target Units shall be compatible with the design of the total Housing Development. Housing Developments shall comply with all applicable development standards, except those which may be modified as provided by this Article.
- (e) Circumstances may arise in which the public interest would be served by allowing some or all of the Target Units associated with one Housing Development to be produced and operated at an alternative development site. Where the developer and the City reach such an agreement, the resulting linked developments shall be considered a single Housing Development for purposes of this Article. Under these circumstances, the developer shall be subject to the same requirements of this Article for the Target Units to be provided on the alternative site.
- (f) A Density Bonus Housing Agreement shall be made a condition of the discretionary planning permits (e.g., tract maps, parcel maps, site plans, planned development or conditional use permits, etc.) for all Housing Developments pursuant to this Article. The Agreement shall be recorded as a restriction on the parcel or parcels on which the Target Units will be constructed. The Agreement shall be consistent with Section 8-22186 of this Article.

Section 8-22184. Development Incentives or Concessions.

- (a) An applicant may submit a written proposal for the specific incentives or concessions that the applicant requests. The City shall grant the concession or incentive requested by the applicant unless the City makes a written finding in accordance with Government Code Section 65915(d).
- (b) Applicants may seek a waiver or modification of development or zoning standards, and if so, shall show that such waivers or modifications are necessary to make the Housing Development economically feasible in accordance with Government Code Section 65915(e) and (f). This requirement may be satisfied by reference to applicable sections of the City's General Plan Housing Element.
- (c) The approval of Additional Incentives shall be determined on a case-by-case basis. The Additional Incentives may include, but are not limited to, any of the following:
 - (1) A reduction of site development standards or a modification of zoning code or architectural design requirements which exceed the minimum building standards provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code. These may include, but are not limited to, one or more of the following:
 - (a) Reduced minimum lot sizes and/or dimensions.
 - (b) Reduced minimum lot setbacks.
 - (c) Reduced minimum outdoor and/or private outdoor living area.
 - (d) Increased maximum lot coverage.
 - (e) Increased maximum building height and/or stories.

- (f) Reduced on site parking standards, including the number or size of spaces and garage requirements.
 - (g) Reduced minimum building separation requirements.
 - (h) Reduced street standards, e.g., reduced minimum street widths.
 - (i) Those specific incentives listed in Section 8-2755 (Affordable Housing Incentives) applicable to developments within the R-3 District of the Fremont Municipal Code.
 - (2) Allow the Housing Development to include non-residential uses and/or allow the Housing Development within a non-residential zone.
 - (3) Other regulatory incentives or concessions proposed by the developer or the City which result in identifiable and actual cost reductions.
 - (4) A Density Bonus of more than 25 percent.
 - (5) Deferred development impact fees (e.g., capital facilities, park land in-lieu, park facilities, fire or traffic impact fees).
- (d) The City may offer an Equivalent Financial Incentive in lieu of granting a Density Bonus and an Additional Incentive(s). The value of the Equivalent Financial Incentive shall equal at least the land cost per dwelling unit savings that would result from a Density Bonus and must contribute significantly to the economic feasibility of providing the Target Units pursuant to this Article.

Section 8-22185. Application Requirements and Review.

- (a) An application pursuant to this Article shall be processed concurrently with any other application(s) required for the Housing Development. Approval or disapproval of an application (with right of appeal to the City Council) shall be made by the Planning Commission.
- (b) An applicant proposing a Housing Development pursuant to this Article, may submit a preliminary application prior to the submittal of any formal request for approval of a Housing Development, including a preliminary application for prospective Additional Incentives pursuant to Section 8-22184 of this Article. A preliminary application shall include the following information:
 - (1) A brief description of the proposed Housing Development, including the total number of units, Target Units, and Density Bonus Units proposed.
 - (2) The zoning and general plan designations and assessors parcel number(s) of the project site.
 - (3) A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveway and parking layout.
 - (4) If an Additional Incentive(s) is requested, the application should describe why the Additional Incentive(s) is necessary to provide the Target Units, in accordance with Section 8-22184 of this Article.
- (c) The Planning Director or Director's designee shall inform the applicant that the requested Additional Incentives will be recommended for consideration with the proposed Housing Development, or that alternative or modified Additional Incentives pursuant to Section 8-22184 will be recommended for consideration in lieu of the requested Incentives. If alternative or modified Incentives are recommended by the Planning Director or the Director's designee, the recommendation shall establish how the alternative or modified Incentives can be expected to have an effect on affordability that is the equivalent of the requested Incentives.

Section 8-22186. Density Bonus Housing Agreement.

- (a) Applicants requesting a Density Bonus shall agree to enter into a Density Bonus Housing Agreement with the City.
- (b) Following execution of the agreement by all parties, the completed Density Bonus Housing Agreement, or memorandum thereof, shall be recorded and the conditions therefrom filed and recorded on the parcel or parcels designated for the construction of Target Units. The approval and recordation shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The Density Bonus Housing Agreement shall be binding on all future owners and successors in interest.
- (c) The Density Bonus Housing Agreement shall include at least the following:
 - (1) The total number of units approved for the Housing Development, including the number of Target Units.
 - (2) A description of the household income group to be accommodated by the Housing Development, as outlined in Section 8-22182 of this Article, and the standards for determining the corresponding Affordable Rent or Affordable Sales Price and Housing Cost.
 - (3) The location, unit sizes (square feet), and number of bedrooms of Target Units.
 - (4) Tenure of use restrictions for Target Units of at least 10 or 30 years, in accordance with Section 8-22183 of this Article.
 - (5) A schedule for completion and occupancy of Target Units.
 - (6) A description of the Additional Incentive(s) or Equivalent Financial Incentives being provided by the City.
 - (7) A description of remedies for breach of the agreement by either party (the City may identify tenants or qualified purchasers as third party beneficiaries under the agreement).
 - (8) Other provisions to ensure implementation and compliance with this Article.
 - A. In the case of for-sale Housing Developments, the Density Bonus Housing Agreement shall provide for the following conditions governing the sale and use of Target Units during the applicable use restriction period:
 - (1) Target Units shall be sold to eligible Very Low or Lower Income Households at an Affordable Sales Price and Housing Cost, or to Qualified Residents (i.e., maintained as Senior Citizen Housing) as defined by this Article.
 - (2) Target Units shall be owner-occupied by eligible Very Low or Lower Income Households, or by Qualified Residents in the case of Senior Citizen Housing, or by eligible Moderate Income Households within Condominium Projects.
 - (3) The purchaser of each Target Unit shall execute an instrument or agreement approved by the City restricting the sale of the Target Unit in accordance with this ordinance during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the Target Unit and shall contain such provisions as the City may require to ensure continued compliance with this ordinance and the state Density Bonus Law.
 - B. In the case of rental Housing Developments, the Density Bonus Housing Agreement shall provide for the following conditions governing the use of Target Units during the use restriction period:
 - (1) The rules and procedures for qualifying households, establishing Affordable Rent, filling vacancies, and maintaining Target Units for qualified tenants;
 - (2) Provisions requiring owners to verify household incomes and maintain books and records to demonstrate compliance with this Article.
 - (3) Provisions requiring owners to submit an annual report to the City, which includes the name(s), address, and income of each household occupying Target Units, and which identifies the bedroom size and monthly rent or cost of each Target Unit.

Section 2:

Section 21811(n) of Article 18.1 (P) Planned District (Density bonus) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code is hereby repealed.

- (1) ~~In developments of five or more residential units, a density bonus¹ of twenty five percent above the step 1 residential density shall be permitted when the developer agrees to construct at least:~~
 - a. ~~Twenty percent of the units (calculated on the base density) for lower income households;~~
 - b. ~~Ten percent of the units (calculated on the base density) for very low income households; or~~
 - c. ~~Fifty percent of the units (calculated on the base density) for senior citizens.~~
- (2) ~~In developments of five or more units, a density bonus above step 2 residential density shall be permitted when the developer agrees to construct at least:~~
 - a. ~~Twenty percent of the units (calculated on the base density) for lower income households; or~~
 - b. ~~Ten percent of the units (calculated on the base density) for very low income households; or~~
 - c. ~~Fifty percent of the units (calculated on the base density) for senior citizens; and~~
 - d. ~~The developer provides any combination of amenities as outlined in section 8-21811(e) of this chapter.~~
- (3) ~~The base density shall be that number of units exclusive of any density bonus granted according to state law (Government Code Section 65915).~~
- (4) ~~Rents for units targeted for very low and low income households shall be affordable to these income groups and adjusted for household size.~~
- (5) ~~Where ten percent of the units are designated as restricted to very low income households rents for these units shall not exceed thirty percent of fifty percent of the median income of the Oakland Primary Statistical Area, adjusted for household size (see Housing Department Handout "Density Bonus Program").~~
- (6) ~~Where twenty percent of the units are designated for lower income households, rents for these units shall not exceed thirty percent of sixty percent of the Oakland Primary Statistical Area, adjusted for household size (see Housing Department Handout "Density Bonus Program").~~
- (7) ~~There shall be no income or rent restrictions imposed on developments which seek a density bonus by providing fifty percent or more units for seniors.~~
- (8) ~~Terms of affordability. Projects receiving both a density bonus and an incentive must restrict units for occupancy by lower or very low income households or senior households for a minimum of thirty years from the date of issuance of the Certificate of Occupancy. If a project receives only a density bonus, the restricted units shall remain restricted to lower or very low income households or to senior households for a minimum of ten years from the date of issuance of the Certificate of Occupancy.~~
- (9) ~~Placement and type of units. Units targeted for very low and low income households shall be distributed throughout the development and shall not be distinguishable in terms of amenities, size or design from other units in the development. The size and number of~~

~~bedrooms of units restricted for lower income households shall be in the same proportion as nonrestricted units.~~

- (10) ~~Incentives. In addition to a density bonus, the city shall offer the developer one or more of the following incentives, as required by state law, unless a written finding is made that the incentive is not required in order to provide affordable housing:~~
- ~~a. Waiver of amenity fees for either the affordable units provided, or the units given as a density bonus up to twenty-five percent of the base (step 1) density.~~
 - ~~b. Reduction in site development standards or modification of zoning requirements or architectural design requirements which exceed building standards approved by the state building standards commission, and which are compatible with the purpose of this article and the general health, safety and welfare.~~